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CASE NO. 10177	
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Reference 10177 EP/CAH	Application No./Patent No. 04251366.3 - 2318
Applicant/Proprietor Zimmer Spine, Inc.	

### COMMUNICATION

The European Patent Office herewith transmits the partial European search report under Rule 46(1) EPC relating to the above-mentioned European patent application.

Copies of the documents cited in the search report are enclosed.

The applicant's attention is drawn to the following:

The Search Division informs the applicant that if the European search report is also to cover inventions other than the invention first mentioned in the claims, a further search fee must be paid for each of these inventions, within **one month** after notification of this communication.

If the application has been filed up to 30 June 1999, the search fee in force before 01 July 1999 (EUR 869,--) or the equivalent applicable on the date of payment is payable.

**This applies also to the search fees requested under Rule 46(1) EPC.**

See also OJ EPO 06/1999, 405.

- ☐ The abstract was modified by the Search Division and the definitive text is attached to the present communication.
- ☒ Additional set(s) of copies of the documents cited in the European search report is (are) enclosed as well.

### Note to users of the automatic debiting procedure:

Unless the EPO receives prior instructions to the contrary, the search fee(s) will be debited on the last day of the period for payment. For further details see the Arrangements for the automatic debiting procedure, Supplement 2 to OJ EPO 01/2005.



DOCUMENTS CONSIDERED TO BE RELEVANT			CLASSIFICATION OF THE APPLICATION (IPC)
Category	Citation of document with indication, where appropriate, of relevant passages	Relevant to claim	
X	EP 0 807 415 A (OLYMPUS OPTICAL CO., LTD) 19 November 1997 (1997-11-19) * column 27, line 38 - column 29, line 12; figures 1,27,28,37 * * column 48, line 38 - column 51, line 21; figures 57,60-63 * * column 57, line 51 - column 60, line 30; figures 82,85 *	1-14	INV. A61B17/58
A	US 3 875 595 A (FRONING ET AL) 8 April 1975 (1975-04-08) * column 2, lines 26-46; figures 1-3 *	1	
A	US 4 545 374 A (JACOBSON ET AL) 8 October 1985 (1985-10-08) * column 9, lines 17-52; figures 12,13 * * column 6, lines 57-64; figures 5,6 *	1	
A	US 5 472 426 A (BONATI ET AL) 5 December 1995 (1995-12-05) * column 2, lines 23-43; figures 11-15 * * column 3, lines 16-23 * * column 8, line 44 - column 9, line 20; figures 21-23 *	1-10	TECHNICAL FIELDS SEARCHED (IPC)  A61B A61M
LACK OF UNITY OF INVENTION			
<p>The Search Division considers that the present European patent application does not comply with the requirements of unity of invention and relates to several inventions or groups of inventions, namely:</p> <p>see sheet B</p> <p>The present partial European search report has been drawn up for those parts of the European patent application which relate to the invention first mentioned in the claims.</p>			
Place of search	Date of completion of the search	Examiner	
Berlin	15 May 2006	Béraud, F	
CATEGORY OF CITED DOCUMENTS		<p>T : theory or principle underlying the invention</p> <p>E : earlier patent document, but published on, or after the filing date</p> <p>D : document cited in the application</p> <p>L : document cited for other reasons</p> <p>&amp; : member of the same patent family, corresponding document</p>	
<p>X : particularly relevant if taken alone</p> <p>Y : particularly relevant if combined with another document of the same category</p> <p>A : technological background</p> <p>O : non-written disclosure</p> <p>P : intermediate document</p>			



DOCUMENTS CONSIDERED TO BE RELEVANT			CLASSIFICATION OF THE APPLICATION (IPC)
Category	Citation of document with indication, where appropriate, of relevant passages	Relevant to claim	
A	US 6 228 022 B1 (FRIESEM TAI ET AL) 8 May 2001 (2001-05-08) * column 4, lines 1-24; figures 1,2 * * column 5, lines 22-39 * * column 6, lines 60-67 * -----		
P,X	US 2003/083688 A1 (SIMONSON ROBERT E) 1 May 2003 (2003-05-01) * the whole document * -----	1-3	
			TECHNICAL FIELDS SEARCHED (IPC)



The Search Division considers that the present European patent application does not comply with the requirements of unity of invention and relates to several inventions or groups of inventions, namely:

1. claims: 1-14

A surgical instrument for providing an access opening to spinal column area with an incremental opening arrangement having a plurality of nested members, configured to expand the opening area

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2. claims: 15-22

A surgical instrument for accessing first and second pedicle locations of a spinal column with a blade member being slidably positionable over the placement wire

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The reasons for which the present application has been deemed to contain 2 inventions which are not linked such that they form a single general inventive concept, as required by Art. 82, EPC are as follows:

Invention I :

A surgical instrument for providing an access opening to spinal column area, comprising:

- a) two placement wires
- b) an incremental opening arrangement having a plurality of nested members, including a slidable dissector member over which a slideable sleeve member is positionable and

a sleeve member configured to expand the opening area of the access opening

Invention II:

A surgical instrument for accessing first and second pedicle locations of a spinal column, comprising:

- a) a portal member having an elongated aperture sized to provide simultaneous access to both pedicle locations;
- b) (at least) one placement wire positioned on one of pedicle locations, and

a blade member being slidably positionable over the placement wire;

1. The closest prior art for the sake of assessing non-unity has been identified as D1 (see below, Re Item V, section 1).

D1: US3875595

D1 discloses:

A surgical instrument for accessing first and second pedicle locations of a spinal column, comprising:

- a) a portal member having an elongated aperture sized to provide simultaneous access to both pedicle locations;
- b) a slidable dissector member over which the portal member is a



The Search Division considers that the present European patent application does not comply with the requirements of unity of invention and relates to several inventions or groups of inventions, namely:

slideable sleeve member

c) two placement wires positioned on the pedicle locations,

2. Hence, the following technical feature of the first invention can be seen to make a contribution over the above teaching of D1 and is therefore considered to be a "special technical feature" (STF) of the invention in the sense of Rule 30:

- a sleeve member configured to expand the opening area of the access opening

The objective technical problem to be solved by this STF may be seen to avoid making an incision as wide as the access opening required.

3. Likewise, the STF of the second invention is:

- a blade member being slidably positionable over the placement wire

The objective technical problem to be solved by this STF may be seen to avoid imprecise positioning of the initial incision in relation to the pedicle locations.

4. Consequently, neither the objective problem underlying the subjects of the two claimed inventions, nor their solutions defined by the special technical features allow for a relationship to be established between the said inventions, which involves a single general inventive concept.

**ANNEX TO THE EUROPEAN SEARCH REPORT  
ON EUROPEAN PATENT APPLICATION NO.**

EP 04 25 1366

This annex lists the patent family members relating to the patent documents cited in the above-mentioned European search report. The members are as contained in the European Patent Office EDP file on  
The European Patent Office is in no way liable for these particulars which are merely given for the purpose of information.

15-05-2006

Patent document cited in search report		Publication date		Patent family member(s)	Publication date
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